

O I P E JC66
APR 22 2003
PATENT & TRADEMARK OFFICE

Attorney Docket No. 9798495-0011

U.S. Serial No. 09/603,255

PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**In re U.S. Patent Application of:
G. Manderfield, Jr. and Ted L. Beaver

Serial No.: 09/603,255

Filed: June 23, 2000

For: MOLDABLE PLASTIC
CONTAINER WITH
HOURGLASS PROFILE

Examiner: N. Eloshway

Group Art Unit: 3727

RECEIVED

APR 29 2003

TECHNOLOGY CENTER R3700

#13
K. Coff
5/11/03**DECLARATION OF A PERSON SKILLED IN THE ART UNDER 37 C.F.R 1.132**

The below-signed person skilled in the art, subject to penalties of perjury, does hereby declare and state, as follows:

1. I have been actively involved in the relevant field of plastic container related research and development for thirty-seven years working for companies such as Owens Illinois, American Can Company and Consolidated Container Corporation.

2. I am familiar with patents and the United States patent application process.

I have been named as an inventor on at least five patents in and related to plastic containers.

3. I have reviewed the specification on drawings for application Serial No. 09/603,255.

4. I have reviewed the Examiner's comments in the office action of December 18, 2002, regarding purported anticipation of claim 1 by U.S. Patent No. 5,385,250 (*Pasquale*).

5. I have read and considered U.S. Patent No. 5,385,250.

6. I have reviewed the claim language of claims 1, 24 and 25, as to be amended in a document entitled Amendment C, and as set forth next:

Attorney Docket No. 948495-0011

U.S. Serial No. 09/603,255

1. (Third Amendment) A plastic molded container, comprising:

a bowl comprising an upper rim, a bottom and a sidewall extending between the upper rim and the bottom,

the sidewall comprising a lower frustum section, a narrow mid-section, and an upper frustum section, the sidewall being a continuous curve in vertical profile,

the lower frustum section connecting the bottom to the mid-section, the lower frustum section decreasing in width as the lower frustum section extends from the bottom to mid-section,

the upper frustum section connecting the upper rim to the mid-section, the upper frustum section decreasing in width as the upper frustum section extends from the upper rim to mid-section, and

the container being constructed such that it is capable of resisting permanent deformation when used in a hot fill or retort process.

24. (Second Amendment) A plastic molded container comprising:

a bowl comprising an upper rim, a bottom and sidewall extending between the upper rim and the bottom,

the sidewall comprising a lower frustum section, a narrow mid-section, and an upper frustum section, the sidewall being a continuous curve in vertical profile,

the lower frustum section connecting the bottom to the mid-section, the lower frustum section decreasing in width as the lower frustum section extends from the bottom to mid-section,

the upper frustum section connecting the upper rim to the mid-section, the upper frustum section decreasing in width as the upper frustum section extends from the upper rim to mid-section,

the container being constructed such that it is capable of resisting permanent deformation when used in a hot fill or retort process,

the sidewall being made of blow-molded materials, and the container having at least one oxygen barrier layer.

25. (Second Amendment) A plastic molded container comprising:

a bowl comprising an upper rim, a bottom and sidewall extending between the upper rim and the bottom,

the sidewall comprising a lower frustum section, a narrow mid-section, and an upper frustum section, the sidewall being a continuous curve in vertical profile,

Attorney Docket No. 98495-0011

U.S. Serial No. 09/603,255

the lower frustum section connecting the bottom to the mid-section, the lower frustum section decreasing in width as the lower frustum section extends from the bottom to mid-section,

the upper frustum section connecting the upper rim to the mid-section, the upper frustum section decreasing in width as the upper frustum section extends from the upper rim to mid-section,

the container having an overall diameter and a height, the diameter being greater than the height,

the container being constructed such that it is capable of resisting permanent deformation when used in a hot fill or retort process, and

the sidewall having a plurality of layers, at least one of which is an oxygen barrier layer.

7. With regard to the *Pasquale* reference, that patent teaches a very different container having a jointed groove connected by a band. Accordingly, the *Pasquale* reference does not teach a continuous curved sidewall in profile i.e., a sidewall with no joints.

8. I have also reviewed the comments in the office action rejecting the claims for purported obviousness under 35 U.S.C. 103(a) in view of various combinations of the following patents:

U.S. Patent No. 5,385,250 (*Pasquale*);

U.S. Patent No. 5,996,882 (*Randall*);

U.S. Patent No. D279,550 (*Fortuna*);

U.S. Patent No. D270,814 (*Edwards*);

U.S. Patent No. 5,865,345 (*Cistone et al.*); and

U.S. Patent No. 6,472,007 (*Bezek et al.*).

9. I have also reviewed and considered each of the above listed patents.

Attorney Docket No. 9798495-0011

U.S. Serial No. 09/603,255

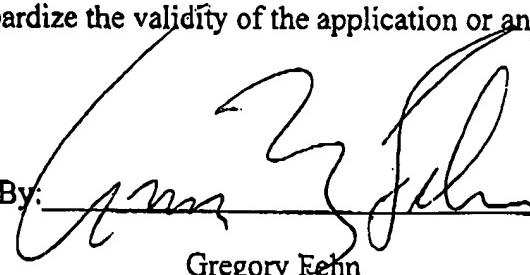
10. I see no fair teaching or suggestion of a container having a continuous curved sidewall capable of withstanding retort and hot fill processes such as set forth in any of the claims in any combination of these patents. In particular, *Pasquale* teaches a PET plastic bottle that withstands pressure from a carbonated liquid. As such, *Pasquale* teaches a bottle having a thin wall at the label, a necked top and a bottom which will prevent blowing out under pressure.

Pasquale, however, is not designed for a hot fill or retort process. Typical PET bottles such as *Pasquale* are relatively thin and contain residual stress resulting from their forming process. These factors lead to weakness and/or distortion during a hot fill/retort process due to the heat applied to the plastic. Additionally, the air in the head space of a PET bottle increases in pressure during the heat stage of the retort process which can cause distortion which does not reverse itself during subsequent cooling resulting in unacceptable container appearance. In the case of a hot fill process, the air and moisture vapor in the headspace results in a slight vacuum as the PET bottle cools which distorts portions of the sidewall. Accordingly, a dent forms in the PET bottle after the hot fill process which results in poor marketability of the PET bottle.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 4/16/03

By:



Gregory Fehn

14276155v3